

DT 04-242

ACCERIS COMMUNICATIONS CORP

**Petition for Authority to Provide Facilities Based
CLEC Services and to operate as a Re-seller of Telecommunications Services**

Order *Nisi* Granting Authorization

ORDER NO. 24,446

March 24, 2005

I. BACKGROUND

On December 6, 2004, Acceris Communications Corp. (Acceris) filed with the New Hampshire Public Utilities Commission (Commission) an application to provide resold and facilities based local exchange telecommunications services as a Competitive Local Exchange Carrier (CLEC) in New Hampshire, pursuant to N.H. Administrative Rules Chapter 1300. Pursuant to RSA 374:22-g, the Commission may authorize the provision of switched and non-switched local exchange telecommunications services by more than one entity in all telephone franchise areas served by a telephone utility that provides local exchange service and has more than 25,000 access lines.

Acceris, a New Hampshire limited liability company, is owned by Acceris Communications Corp, which is a Delaware corporation. Acceris is authorized to provide local exchange service in over 30 other states, and is providing such services in Massachusetts, New Jersey, New York and Pennsylvania.

Pursuant to N.H. Administrative Rule Chapter Puc 1300, an applicant's petition for certification as a CLEC shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for

financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

II. STAFF ANALYSIS

The Commission Staff (Staff) has reviewed Acceris' petition for compliance and reports that Acceris has provided all the information required by Puc 1304.02 and that the information provided supports Acceris' assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b) (2), (e) and (g). Staff further reports that adding Acceris to the choices available to New Hampshire telecommunications consumers appears to be in the public interest.

Acceris requests a waiver of the surety bond requirement in Puc 1304.02(b). In support, Acceris submitted a sworn statement averring that it does not require deposits or advance payments from customers. Staff recommends granting the waiver.

Acceris also requests a waiver of Puc 1304.02(a) (6) which requires the filing of a U.S. Geological Survey-based map of the areas in which service will be offered. Acceris states that it will offer service only in those territories served by Verizon New England d/b/a Verizon New Hampshire (Verizon). Maps of that territory are already on file with the Commission. Staff recommends granting the waiver.

III. COMMISSION ANALYSIS

We find that Acceris has satisfied the requirements of Puc 1304.01(a) (1) and (2). We also find that granting Acceris authority to operate as a CLEC in Verizon's territory is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic

efficiency, universal service, carrier of last resort, the incumbent telephone company's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred.

Acceris attests it will not charge any customer deposits, including advance payments, and seeks waiver of Puc 1304.02(b) which requires a facilities based CLEC applicant to post a surety bond to cover refund of deposits and advance payments. A rule waiver is appropriate upon a determination by the Commission that such a waiver serves the public interest and will not disrupt the orderly proceeding of the Commission Puc 201.05(a). Based on Acceris' attestation and the fact that the waiver will not be disruptive, the Commission finds Acceris' request for a waiver of Puc 1304.02(b) to be in the public interest and will grant the request. However, this waiver shall apply only so long as Acceris does not require such deposits or advance payments. In the event Acceris decides to change its policy on deposits and advance payments, it must immediately notify the Commission.

We find that filing a map is not necessary in these circumstances and therefore the public interest will be served by granting a waiver of Puc 1304.02(a)(6), provided that Acceris offer its services only in those territories served by Verizon.

Pursuant to Puc 1304.02(a)(7), applicants for CLEC certification agree to adhere to all state laws and Commission policies, rules and orders. We take this opportunity to draw attention to two rules in particular. Puc 1306.01(8) and Puc 1306.01(10), respectively, describe Enhanced 911 (E911) and Telecommunications Relay Service (TRS) as part of the minimum basic service that every CLEC must provide. Pursuant to Puc 1306.01(c), authorized CLECs are responsible to collect and properly remit the E911 surcharge, currently set at 42 cents per access

line per month. Pursuant to Puc 1306.01(b), authorized CLECs are also responsible to collect and remit TRS charges, currently set at 4 cents per access line per month.

As new competitors enter the telecommunications market, we recognize that New Hampshire's 603 area code encounters increasing demand. Accordingly, we will require that Acceris request and use numbers responsibly and conservatively, and we invite Acceris to explore alternative mechanisms enabling them to use existing numbers as efficiently as possible. In approving this application, we require Acceris to comply with our orders on number conservation, including Order No. 23,385, issued January 7, 2000, and Order No. 23,392, issued January 27, 2000, as well as further orders issued by the Commission concerning this matter.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that conditioned upon the effective date below, Acceris' petition for authority to provider resold and facilities based local exchange telecommunications services is granted only within the service territory of Verizon, subject to all relevant Commission rules and orders; and it is

FURTHER ORDERED, that Acceris' request for waiver of the surety bond requirement per Puc 1304.02(b) is GRANTED, and it is

FURTHER ORDERED, that Acceris' request for a waiver of the map filing requirement in Puc 1304.02(a) (6) is GRANTED, and it is

FURTHER ORDERED, that Acceris shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation, such publication to be no later than April 4, 2005 and to be documented by affidavit filed with this office on or before April 25, 2005; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* shall submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than April 11, 2005 for the Commission's consideration; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 25, 2005; unless Acceris fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that, should Acceris fail to exercise the authority granted herein within two years of the date of this order, the authority granted shall be deemed withdrawn, null, and void; and it is

FURTHER ORDERED, that Acceris, no less than ten days prior to commencing service, shall file with the Commission a rate schedule including the name, description and price of each service, in accordance with N.H. Admin. Rules Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of March, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Michelle A. Caraway
Assistant Executive Director and Secretary